

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1732 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

HARINDIBEN JILASINGH ALIAS MAHINANDRIBEN JAILASINGH

Versus

KANTABEN NARANDAS RANA

Appearance:

MR RN SHAH for Petitioner

MR SK JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/07/98

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of
the Bombay Rent Act (for short "the Act").

2. Brief facts are that the property was initially

owned by Madhukar Chimanbhai Patel. He sold the same to the present respondent on 13.12.1979. Notice of attornment was issued by the landlord which was accepted by the tenant revisionist. The respondent served notice of demand on the revisionist demanding arrears of rent from 13.12.1979 to 31.7.1980 amounting to Rs.600/-. This notice was neither replied nor complied with. Consequently the suit for eviction was filed so also for recovery for arrears of rent.

3. The revisionist contested the suit on the ground that Rs.80/- p.m. is not the standard rent and that the standard rent is only Rs.45/- p.m. She further pleaded that even Rs.45/- p.m. is excessive and standard rent at Rs.30/- p.m. inclusive of tax be fixed. She also pleaded that Rs.2000/- were paid to the original landlord which were to be adjusted from future rent and since this was not done by the previous landlord she was not in arrears of rent for more than six months.

4. The trial Court did not find any force in the defence plea and the Suit was accordingly decreed. An Appeal was preferred which was also dismissed. Hence this Revision.

5. I have heard Shri R.N.Shah representing the revisionist and Shri S.K.Zaveri representing the respondent.

6. Only two points were urged by the learned Counsel for the revisionist. The first was that Rs.2000/- paid to the previous landlord have not been adjusted either by him or by the present landlord. Hence the tenant was not in arrears of rent for more than six months. Upon scrutiny of material on record I find that this contention cannot be accepted. No doubt there is allegation of payment of Rs.2000/- to the previous landlord, but there was no proof of the same. In the trial Court only zerox copy of some writing given by the previous landlord was filed. The zerox copy was not proved nor the original writing was filed in the trial Court. The original writing was filed in the Appellate Court, but even then it was not proved by producing additional evidence and by examining the previous landlord and the marginal witnesses. Thus the alleged payment of Rs.2000/- was not established by the revisionist. Hence the two Courts below committed no error in ignoring this payment.

7. The next contention has been that Section 12(3)(a) of the Act is not applicable because the rent

did not include the taxes. Section 12(3)(a) of the Act provides that where the rent is payable by the month and there is dispute regarding amount of the standard rent or permitted increase, if such rent or increase in arrears by the period of six months or more and the tenant failed to make payment thereof until the expiration of the period of one month after notice referred to in Sub.Sec.2 the Court may pass Decree for eviction in any such Suit for recovery of possession.

8. From the material on record it is clear that no dispute regarding standard rent was raised by the revisionist in the trial Court. She admitted that even the notice was not replied and the dispute regarding standard rent was not raised at the earliest opportunity. It was raised only in the written statement. The trial Court after considering the admission of the tenant that she was tenant of Rs.80/- p.m. fixed at the rate of Rs.80/- p.m. as standard rent. The belated defence plea was in the circumstances rightly rejected by the two courts below. Since there was no dispute regarding standard rent and admittedly the revisionist was in arrears of rent for more than six months and further because she failed to pay the same after receipt of notice of demand, Section 12(3)(a) of the Act was attracted and it was rightly applied by the two Courts below.

9. It may also be mentioned that even after application under Section 11(4) of the Rent Act having been moved by the landlord the revisionist did not deposit the arrears of rent in Court rather she admitted that she was not in a position to pay the arrears of rent and she wanted time to vacate the premises. Even in Appeal she wanted time to vacate the premises. Of course in Appeal some amount of rent was deposited, but not the entire rent was deposited. Consequently it cannot be accepted that Section 12(3)(a) is not applicable. The Suit for possession was rightly decreed by the two Courts below. There is thus no merit in this revision which is liable to be dismissed.

10. In the end Shri R.N.Shah, learned counsel for the revisionist contended, in the alternative, that in case Judgments and Decrees of two Courts below are confirmed some time may be granted to the revisionist for vacating the accommodation. I think four months time to vacate the premises will be reasonable.

11. In the result the revision is dismissed. Parties to bear their own costs. The revisionist is permitted to

vacate the premises and hand over vacant possession to
the respondent within period of four months from today.

Rule discharged. Interim relief vacated. No order
as to costs.

sd/-

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